IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 36 OF 2005

1. Azim Khan
   Son of Abdul Gaffur Khan,
   63 years of age, married,
   Indian National, Engineer,
   resident of Villa Morgado,
   Baina, Vasco-da-Gama, Goa.

2. Saifulla Khan,
   son of Bashir Khan,
   38 years of age, married,
   Indian National, businessman,
   resident of Mangor,
   Vasco-da-Gama, Goa.

3. Abdul Majid Khan,
   son of Abdul Rehman Khan,
   46 years of age, married,
   Indian National, businessman,
   resident of Islampura, Baina,
   Vasco-da-Gama, Goa.

4. Shaikh Idris,
   son of Shaikh Abdulla,
   45 years of age, married,
   Indian National, businessman,
   resident of Sasmolem, Baina,
   Vasco-da-Gama, Goa.

5. Bashir Khan,
   son of Imam Khan,
   63 years of age, married,
   Indian National, businessman,
   resident of Mangor Hill,
   Vasco-da-Gama, Goa.

6. Shaikh Imran,
son of Shaikh Dawood,
44 years of age, married,
Indian National, businessman,
resident of Islampura, Baina,
Vasco-da-Gama, Goa. ... Petitioners

versus

1. Levinson J. Martins,
Dy. Collector & Sub-Divisional
Magistrate, Office of the Dy.
Collector & Sub-Divisional
Magistrate, Mormugao,
Vasco-da-Gama, Goa.

2. Farooq Ahmed Shaikh,
son of Shaikh Daud,
73 years of age,
married, Indian National,
resident of Baina,
Vasco-da-Gama, Goa.

3. Abdul Razak,
son of Dastagirsab Nagarchi,
65 years of age, resident of
Zuari Complex, Baina,
Vasco-da-Gama, Goa.

4. Badre Alam Khan,
son of Anjum Khan,
40 years of age,
married, Indian National,
Trustee, resident of Baina,
Vasco-da-Gama, Goa.

5. Shaikh Mustaq Ahmed,
son of Farooq Ahmed Shaikh,
30 years of age, married,
Indian National, resident of

Baina, Vasco-da-Gama,
Goa.

6. Dastigir Bepari,
25 years of age, married,
Indian National, resident
of Katem, Baina, Vasco-da-Gama,
Goa.

7. Hamza Khan,
45 years of age, married,
Indian National, resident of
Baina, Vasco-da-Gama, Goa.

8. State,
through Public Prosecutor. ... Respondents

Mr. S. G. Dessai, Senior Advocate with Mr. K. Kashalkar, Advocate for the Petitioners.

Ms. W. Coutinho, Public Prosecutor for the Respondent Nos.1 and 8.

Mr. A. D. Bhobe, Advocate for the Respondent Nos.2 to 7.

CORAM : N. A. BRITTO, J.

DATE : 2ND AUGUST, 2006.

ORAL JUDGMENT

Heard Mr. S. G. Dessai, the learned Senior Counsel on behalf of the petitioners and Mr. A. D. Bhobe, the learned Counsel on behalf of the respondent nos.2 to 7.

2. This petition was filed to assail the Order dated 6-10-2005 of the learned Sub-Divisional Magistrate, Vasco-da-Gama.

3. The dispute between the parties is regarding the management of a mosque built on Chalta No.201 under P.T. Sheet No.155. There is no dispute that initially the said property was purchased by Sale Deed dated 14-6-1991 by 6 persons, namely the first and the fifth petitioners, the second and the third respondents, Mohamed Yusuf Menon and Ismail Khan and later with individual contributions as well as with public donations a Mosque/Masjid was erected in the year 1992 under the leadership of Farooq Ahmed Shaikh(respondent no.2) and a room for the residence of Pesh-imam was constructed. Although the said property was purchased with a view to form a trust, to be known as Tanzime Ahle Sunnat, the same was never formed nor registered but petitioner nos.1, 3, 5 and 6 formed a Society on or about 21-10-2003 known as Intizamia Committee of Masjid-e-Taiba and its name was subsequently changed into Intizamia Committee of Sunni Masjid-e-Taiba & Madersa-e-Ghausia. The real disputes between the petitioners and the

respondents presumably started around 12-4-2005 when the Pesh-imam(respondent no.4) proceeded on leave of 45 days and in his place Sultan Rizwi was appointed. The respondents claim that it is they who sanctioned his leave from 12-4-2005 to 26-5-2005. The petitioners claimed that they terminated his services from 15-4-2005. Both the parties claim that each of them had brought in Sultan Rizwi as Pesh-iman.

4. On or about 11-5-2005 the respondent nos.2 and 3 (two out of six original purchasers of the plot) filed an application to the Police authorities. On the same day they filed a suit in the name of the trust which came to be dismissed subsequently on 24-6-2005. Pursuant to the said application dated 11-5-2005, the Vasco Police Station submitted a report to the Sub-Divisional Magistrate, Vasco-da-Gama to initiate action under Section 107 of the Code(Code of Criminal Procedure, 1973) as a result of which the learned S.D.M. passed an Order dated 9-6-2005. The said Order was as follows:-

> (1) As a preventive measure the Managing Committee under the name Intizamia

Committee of Sunni Masjid e Taiba, Party II registered under Registration No.256/Goa/03 Government of Goa, shall perform the prayers meet/religious Assembly as scheduled through their Maulana.

(2) The members of Tanzim Ahle Sunnat(Trust) i.e. party I shall not interfere in the affairs till the meeting of the new committee to be formed is conducted as per law in force.

5. The respondent nos.2 to 8 challenged the said Order before this Court in Writ Petition No.212 of 2005 which Writ Petition came to be disposed of by Order dated 29-6-2005. The main grievance of the respondent nos.2 to 8, before this Court, in the said Writ Petition, was that the Sub-Divisional Magistrate had not heard them before passing the said Order dated 9-6-2005. This Court noted that there were two parties, one in the name of Tanzim Ahle Sunnat and the other in the name of Intizamia Committee of Sunni Masjid-e-Taiba who claimed the right to manage the affairs of the mosque. This Court also noted

that the impugned Order dated 9-6-2005 did not clarify as to who will take steps to form the new Committee, whether the registered Society of the Intizamia Committee or the Tanzim Ahle Sunnat. This Court expressed the hope that it would be in the interest of the management of the mosque that the new Committee was formed from amongst the members of both the rival groups provided they agreed to forget their past differences and were interested in the proper management of the affairs of the mosque and in that event, the lower authority might have to depute certain person to call for the meeting for the purpose of formation of new Committee, after hearing both the parties. Since the petitioners claim that they were not heard before passing the impugned Order, which was not disputed on behalf of party no.2(petitioners Society) and at the suggestion of the learned Counsel, this Court treated the impugned Order dated 9-6-2005 as an ex-parte Order, though the Order had mentioned that both the parties were heard. This Court directed the learned S.D.M. to treat the said Order dated 9-6-2005 as an ex-parte Order and to pass final orders, after hearing both the parties. This Court gave liberty to both the parties to file their say and produce documents in support of their say, leaving all questions

open. This Court also directed the learned S.D.M. to dispose of the matter expeditiously and as early as possible, in view of the apprehended breach of peace.

6. There was no dispute between the parties at any stage that the Order passed on 9-6-2005 or to be passed pursuant to the directions of this Court dated 29-6-2005 was an order under Section 144 of the Code. The only objection the respondent nos. 2 to 8 took before the learned S.D.M. was that the said Order dated 9-6-2005 had ceased to be in force due to passage of time since any Order made under Section 144 of the Code could not remain in force for more than 2 months as stipulated under sub-section(4) of Section 144 of the Code. It appears that there were several issues raised on behalf of the petitioners as a result of which the Order dated 6-10-2005 came to be made and by virtue of this Order, the learned S.D.M., inter alia, observed that an inquiry was required to be held under Section 145 of the Code and, therefore, ordered notices to be issued for the said inquiry. The said conclusion was drawn by the learned S.D.M. after it was argued on behalf of the petitioners that the factum of possession, as to which of the parties was entitled to, could be

decided only in an inquiry under Section 145 of the Code.

7. By Order dated 21-10-2005, made in this petition, the petition was to be treated as filed under Section 482 of the Code. Since the impugned Order dated 6-10-2005 was made on the very first day of the holy month of Ramzan, this Court did not interfere with the same. Nevertheless the Court stayed the impugned Order dated 6-10-2005 in so far as the initiation of the proceedings under Section 145 of the Code were concerned.

8. The petition came up for hearing before this Court on various dates. Efforts were made for amicable settlement between the parties. The parties were referred to the Counselling and Conciliation Center, Margao under the South Goa District Legal Services Authority. The parties never disputed that the original 6 purchasers have a right to manage the affairs of the said mosque/masjid. As observed in the Order of this Court dated 10-2-2006 the parties lost sight of the fact that after 6 of them purchased the property, substantial contributions came from the Community and the mosque/masjid was constructed for the benefit of the Community. Before the Counselling and

Conciliation Center it was suggested that a new Society ought to be formed which could be registered as a religious and charitable Society and the said proposal was accepted by both the parties and they had agreed that such institution be registered but the question was as to who was to manage the affairs of the mosque during the interim period. As observed by this Court in Order dated 10-2-2006, entrusting the management to all 6 original purchasers would create more problems than solve any. Both the parties were not able to suggest a name of any single person from their Community who could be entrusted for the time being with the management of the said property/mosque until all 6 decided about the formation of the religious and charitable Society, as agreed by them before the Counselling and Conciliation Center, Margao until the disposal of the petition. By the same Order dated 10-2-2006 a Committee was appointed by this Court consisting of the Mamlatdar of the Taluka, petitioner no.5 and respondent no.2. The Mamlatdar was given liberty to call for the meeting of the original 6 purchasers or any other members of the Community as deemed fit and proper by him to facilitate the management of the masjid and/or the formation of the religious and charitable Society. The said

arrangement was to be in place until the disposal of the petition and/or the formation of the said Society or any other arrangement which the said 6 purchasers, by majority deem fit to arrive at. Subsequently, the Mamlatdar filed his report dated 27-6-2006 stating that he had held the meetings of the 6 original purchasers to discuss various possible options to permanently run the management of the masjid. It was reported by him that he had held meetings on 8-3-2006, 28-3-2006, 17-4-2006, 11-5-2006 and 16-5-2006 and during those meetings the original owners by majority of 4:2 agreed to form the Society under the name of "New Tanzim-E-Ahle-Sunnat" and the said Society has now been registered under No.48/Goa/2006, therefore, necessary directions be issued to him to hand over the management to the newly formed Society.

9. As a result, by Order dated 12-7-2006 the Mamlatdar was directed to hand over the management of the mosque/masjid to the President of the newly formed Society and the said arrangement was to continue till the petition is finally disposed of.

10. As per the petitioners, the impugned Order dated 6-10-2005 is not a final Order made by the learned S.D.M., pursuant to the directions of this Court in Writ Petition No.212 of 2005 and, therefore, it needs to be set aside. It is also submitted on behalf of the petitioners that since a new Society has now been formed by a majority of 4:2 of the original purchasers it is just and proper that the management of the mosque/masjid continues with the said Society and such an arrangement would otherwise meet the ends of justice, as contemplated by Section 482 of the Code. On the other hand, it has again been submitted on behalf of the respondent nos.2 to 8 that the impugned Order has again ceased to have legal effect in terms of Section 144(4) of the Code and, therefore, the petition has become infructuous and deserves to be dismissed as such. It is also submitted on behalf of respondent nos.2 to 4 that the impugned Order dated 6-10-2005 is the final Order made by the learned S.D.M. in compliance with the directions of this Court in the aforesaid Writ Petition. However, when it is pointed out to the respondents that this Court did not contemplate that the learned S.D.M. should conduct any inquiry under Section 145 of the Code, it is submitted on their behalf that the impugned

Order to that extent is not correct. It is also submitted that after the first Order dated 9-6-2005 was treated as an ex-parte Order, any other Order had to be made in terms of sub-section (5) of Section 144 of the Code. However, this position is disputed on behalf of the petitioners since the Order dated 9-6-2005 was treated as an ex-parte Order under sub-section(2) of Section 144, and it is submitted that any final Order had to be made in terms of Section 144(1) of the Code and not under Section 144 (5) of the Code.

11. In my view, the impugned Order dated 6-10-2005 cannot be treated as a final Order made under Section 144 of the Code as required by this Court in the said Writ Petition. A reading of the said impugned Order dated 6-10-2005 shows that it is an interim Order, as stated by the learned S.D.M. in the very first paragraph of the said Order. This interim Order, according to the learned S.D.M. is made by him under sub-section(5) of Section 144 of the Code. This is also evident from second unnumbered paragraph at page 3 of the Order. The impugned Order was an interim Order pending inquiry under Section 145 of the Code. In the first unnumbered paragraph at page 4, the

learned S.D.M. has given a prima facie finding that the day to day affairs of the mosque/masjid were being looked after the respondent nos.2 to 8(Party No.I) and the said Shri Badre was functioning after being appointed by the said Party No.I and, therefore, his termination of service by Party No.II was prima facie wrongful and dispossession arising therefrom was also wrongful. Incidentally, it may be observed here that there were no disputes or differences between the first and fifth petitioners and second and third respondents till then and till date there is no finding recorded as to which of the parties namely the petitioners or the respondents were entitled to manage the affairs of the temple. It also may be observed that the suit filed by respondents under the banner of the Trust which was never registered came to be dismissed on 24-6-2005. Powers under Section 144(5) of rescission or altercation could have been exercised only after a final Order was made, in terms of directions issued by this Court.

12. Since the impugned Order is not a final Order made under Section 144 of the Code and has not been in accordance with the directions of this Court, the same requires to be set

aside. That leaves us with more than one option. The first, is to set aside the impugned Order and remand the case back to the learned S.D.M. to decide afresh and make a final Order under Section 144 of the Code as required by this Court. The second, is to hold that the impugned Order dated 6-10-2005 has ceased to have legal effect in terms of sub-section (4) of Section 144 of the Code. The third, to take cognizance of subsequent events and current realities and mould the relief accordingly i.e. continue the management of the mosque with the newly formed Society namely New Tanzim Ahle Sunnat and who has been entrusted with the management by virtue of Order dated 12-7-2006. Courts are bound to take into account subsequent events to make the right or remedy more meaningful. In case the second option is exercised, the fear of breach of peace will loom large. The parties would be placed in square one which prevailed, when proceedings were initiated. From 10-2-2006 the management of the mosque/masjid was done by the Mamlatdar along with petitioner nos.2 and 5 and now is being done by the new Tanzim Ahle Sunnat Society formed by majority of 4:2 of the original purchasers. It would therefore be in the interest of justice to continue the said arrangement. In other words, the

management of the mosque/masjid shall continue to be carried out by the newly formed Society registered under No.48/Goa/2006 till such time the respondent nos.2 to 8 seek appropriate remedies before the Civil Court which in law they are entitled to. In other words, the management of the mosque/masjid shall continue to be with the said Society registered under No.48/Goa/2006 till the dispute between the parties as regards the management of the property/mosque is decided by the Civil Court.

13. With the above observations, the petition is disposed of.

N. A. BRITTO, J.

RD.